UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1995/NGO/36
10 August 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-seventh session
Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Written statement submitted by the International Human Rights Law Group, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[9 August 1995]

1. The International Human Rights Law Group is a non-governmental human rights organization based in Washington, D.C. The purpose of this statement is to bring to the Sub-Commission's attention the disregard of the internationally guaranteed rights of due process of law safeguards in Nigeria. These violations constitute a pattern of gross abuses of human rights which deserve the Sub-Commission's attention.

2. Nigeria, Africa's most populous country acceded to the International Covenant on Civil and Political Rights (ICCPR) on 29 July 1993. Nigeria has also ratified the African Charter on Human and Peoples' Rights. As a State party to these international human rights treaties, Nigeria has committed itself to refrain from actions contrary to their object and purpose. The guarantees of fair trial are essential elements of these treaties.

3. The Nigerian Government has undermined the rights protected by these human rights treaties by suspending or abrogating large parts of the 1979 Constitution generally and the Bill of Rights in particular; diverting trials from civilian courts of law to special tribunals, many of a military character without a right of appeal; promulgating retroactive decrees, some of which have had the effect of annulling judicial decisions against the Government; suspending enjoyment of the right to apply for habeas corpus and enacting decrees which exclude judicial review of government conduct.

4. The International Human Rights Law Group is particularly concerned that the civilian judicial process has been supplanted by military tribunals in criminal trials involving human rights and pro-democracy activists. These military tribunals, composed primarily of military officers who are close associates of the military Government, have the power to impose the death sentence and to order public executions. These military tribunals, susceptible to the control of the military Government, fail to meet the standard of an independent and impartial tribunal guaranteed in the provisions of article 14 (1) of the ICCPR.

5. Accused persons convicted and sentenced by these military tribunals have no judicial right of appeal. Section 5 (1) of the Treason and Other Offences (Special Military Tribunal) Decree of 1986 only allows an administrative appeal to the Joint Chiefs of Staff, the premier military body which is chaired by General Abacha. For these reasons, military trials in Nigeria are conducted inconsistently with article 14 (5) of the ICCPR and article 7 (1) (a) of the African Charter on Human and Peoples' Rights both of which guarantee a right of appeal against conviction and sentence by a higher court.

6. The recent trials of at least 23 coup suspects by the special military tribunal headed by Brigadier-General Patrick Aziza exemplifies the foregoing points. This tribunal, comprised only of military officers, was required by the military Government to conduct the trial in a 20-day period, clearly insufficient time to conduct a defence for a group of at least 23 persons facing the death penalty, which violates article 14 (3) (b) of the ICCPR. The accused persons were also denied an opportunity to call witnesses or to have legal counsel of their choice contrary to article 14 (3) (d) and (e), respectively, of the ICCPR. The closure of the trial to the press, family members and the public was not based on any of the criteria set out in article 14 (1) of the ICCPR.

7. Although the military tribunal convicted and condemned the accused persons to sentences including the death penalty, the condemned men have no right of appeal against these convictions and sentences. The fate of those sentenced to death now hangs in the balance. The International Human Rights Law Group is gravely concerned that some or all of the defendants sentenced to

death may face imminent execution. In 1990, 69 military officers were publicly executed for their alleged participation in a coup attempt after a similar treason trial.

8. There also continues to be uncertainty about the fate of former Nigerian head of State General Olesujun Obasanjo and his deputy, Major General Shehu Musa Yar'Adua, whose sentences were announced by the Aziza tribunal after a very short trial. Like the other accused persons, the charges brought against them were not revealed to their families or counsel. Additional confusion arose following the formal announcement made by a military spokesman on 14 July 1995 that 40 people had been convicted, yet the information available to the public indicated there were only 23 people on trial.

9. The trial of Ken Saro-Wiwa, the President of the Movement for the Survival of the Ogoni People (MOSOP), and 14 others raises similar concerns about Nigeria's disregard for fair trial procedures as enshrined in the ICCPR. MOSOP has led a campaign against the Nigerian Government and oil mining companies for environmental degradation of Ogoniland and the Government's repression of protests against pollution and environmental degradation of their land. Though Ken Saro-Wiwa and his co-accused should have been tried by a civilian court, the military Government appointed a Civil Disturbances Special Tribunal in November 1994 to try them for their alleged participation in the murder of four chiefs in May 1994. Unlike the trial of the alleged coup plotters, the trial of Ken Saro-Wiwa has been open to the public and international observers. However, the accused persons, who face the death penalty, have been denied the right of appeal or review of their sentences by a higher court. In addition, defence counsel have questioned the Tribunal's commitment to a fair trial especially after it suppressed critical evidence presented by the defence.

10. Other trials that violate international standards are trials held before the Robbery and Firearms Tribunals which are established in every state. Suspects charged before these tribunals are not allowed to have counsel of their choice and are usually detained for long periods of time before they are formally charged. During the period when these suspects are held without bail, numerous credible reports from Nigerian and international human rights groups like Amnesty International indicate that the suspects are subjected to torture and other inhuman and degrading treatment in order to elicit confessions from them in violation of article 7 of the ICCPR. These tribunals therefore have a very high conviction rate. All convicted suspects are sentenced to death by public execution with no right of appeal. Over the past two years, there have been numerous executions of unidentified convicted prisoners. On 22 July 1995, 43 prisoners were publicly executed in Lagos. In 1994 over 100 people were executed. Since those sentenced to the death penalty are often executed immediately after they are sentenced, their rights to seek commutation or pardon of their sentences is violated contrary to article 6 (4) of the ICCPR and the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty.

11. The International Human Rights Law Group also notes the extensive use of police powers to silence human rights and pro-democracy activists by instituting massive arrests followed by indefinite detention. In June 1995, for example, over 300 people, including human rights campaigners,

pro-democracy activists and trade union leaders, were arrested in massive sweeps, held at undisclosed locations without charge and without access to their families and lawyers. In July 1995, similar arrests were also conducted. These arrests and incarcerations have been carried out inconsistently with article 9 of the ICCPR and article 6 of the African Charter of Human and Peoples' Rights which guarantee freedom from arbitrary arrest. It is noteworthy that the State Security of Persons Decree of 1984 (as amended by subsequent military Governments) allows the police to hold suspects for renewable periods of three months without trial. Consequently, there continue to be numerous reports from the press and human rights groups that a large number of Nigerians are being held incommunicado under this decree.

12. We applaud the planned visits to Nigeria of the Vice-Chairman of the Working Group on Arbitrary Detention and that of the High Commissioner's special representative on detained persons. The gravity of the human rights situation in Nigeria, however, requires additional intervention.

13. In light of the foregoing, the International Human Rights Law Group urges the Sub-Commission to take the following measures:

(a) Request the United Nations High Commissioner for Human Rights to undertake a country mission to Nigeria with a view to holding consultations and meetings with the military authorities and human rights groups about the observance of internationally guaranteed due process rights;

(b) Request the Special Rapporteur on the independence of the judiciary to visit Nigeria and prepare a report on the observance of the internationally guaranteed due process of law safeguards;

(c) Request the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Nigeria to investigate the prevalence of the death penalty and executions and to analyse the application of international standards in the imposition and execution of the death penalty;

(d) Request the Special Rapporteur on torture to visit Nigeria with a view to examining questions relevant to torture especially in connection with suspects held incommunicado and those awaiting trial before specially convened tribunals which do not guarantee due process rights.

- - - - -